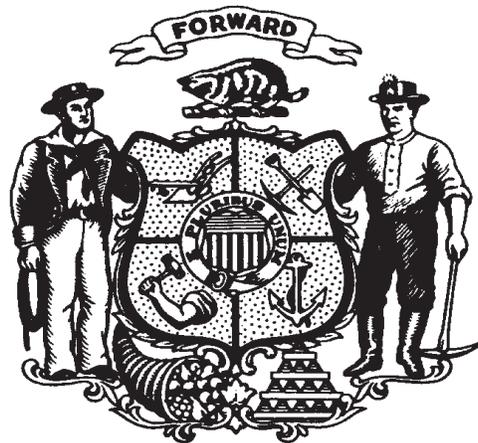


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Emergency rules now in effect

Under s. 227.24, Stats., state agencies may promulgate rules without complying with the usual rule-making procedures. Using this special procedure to issue emergency rules, an agency must find that either the preservation of the public peace, health, safety or welfare necessitates its action in bypassing normal rule-making procedures.

Emergency rules are published in the official state newspaper, which is currently the Wisconsin State Journal. Emergency rules are in effect for 150 days and can be extended up to an additional 120 days with no single extension to exceed 60 days.

Occasionally the Legislature grants emergency rule authority to an agency with a longer effective period than 150 days or allows an agency to adopt an emergency rule without requiring a finding of emergency.

Extension of the effective period of an emergency rule is granted at the discretion of the Joint Committee for Review of Administrative Rules under s. 227.24 (2), Stats.

Notice of all emergency rules which are in effect must be printed in the Wisconsin Administrative Register. This notice will contain a brief description of the emergency rule, the agency finding of emergency or a statement of exemption from a finding of emergency, date of publication, the effective and expiration dates, any extension of the effective period of the emergency rule and information regarding public hearings on the emergency rule.

Copies of emergency rule orders can be obtained from the promulgating agency. The text of current emergency rules can be viewed at www.legis.state.wi.us/rsb/code.

Agriculture, Trade & Consumer Protection (2)

1. Rules adopted revising **chs. ATCP 10 and 11** relating to chronic wasting disease in cervids.

Finding of emergency

(1) Chronic wasting disease is a contagious disease known to affect several species of the cervid family, including elk, white-tailed deer, black-tailed deer, red deer and mule deer. The disease is always fatal. At the present time, there is no scientific evidence to suggest that chronic wasting disease is transmitted to non-cervids or to humans. But there is limited scientific knowledge about the disease, and this lack of knowledge has contributed to public concerns.

(2) The cause of chronic wasting disease is not fully understood. The disease appears to be related to aberrant protein molecules called prions. By an unknown mechanism, prions apparently cause other protein molecules in the cervid brain to take aberrant forms. The disease causes microscopic vacuoles (holes) in the brain. Diseased cervids become emaciated, display abnormal behavior patterns, and experience loss of bodily functions.

(3) Science does not understand how chronic wasting disease is spread. It is thought that infected cervids can transmit the disease to other cervids, either directly or by contaminating their environment. It appears that cervid-to-cervid contact facilitates the spread of the disease.

(4) On February 27, 2002, the national veterinary services laboratory informed Wisconsin that it had confirmed chronic wasting disease for the first time in this state. The laboratory

confirmed the disease in test samples collected from 3 free-ranging white-tailed deer killed by hunters during the November 2001 gun deer season. The Wisconsin Department of Natural Resources (DNR) collected these samples as part of a statewide disease surveillance program. With the voluntary cooperation of hunters, DNR collected test samples from deer killed and registered by hunters at selected hunting registration sites around the state. DNR collected a total of 345 samples statewide, including 82 samples at the Mt. Horeb registration station. The 3 deer that tested positive for chronic wasting disease were all registered at the Mt. Horeb station. The 3 deer were shot in close proximity to each other in Vermont Township in Dane County. We do not know how the 3 deer were exposed to chronic wasting disease, nor do we know the extent of infection in the free-ranging herd.

(5) We do not know whether any captive cervids in Wisconsin are infected with chronic wasting disease (there are no findings to date). If captive cervids are infected, the close proximity of cervids within a captive herd may facilitate the spread of disease within the herd. The movement of infected cervids between herds may spread the disease to other herds. Contact between free-ranging and captive cervids may also spread the disease.

(6) Persons importing captive cervids to Wisconsin must obtain an import permit from the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP). Importers must identify the herd of origin and the herd of destination. A veterinarian must certify that the cervids appear to be in good health, and that they have been tested for tuberculosis and brucellosis. There is no chronic wasting disease testing requirement, because there is no way to test live cervids for the disease.

(7) Since 1995, a total of 2,604 captive cervids have been legally imported into Wisconsin. This includes 2,020 elk, 191 whitetail deer, 12 mule deer and 387 other cervids. Chronic wasting disease has been found in free-ranging herds or in some captive herds in Colorado, Nebraska, Oklahoma, Kansas, Montana, South Dakota, and Wyoming. Since 1995, a total of 410 captive cervids have been legally imported to Wisconsin from these states. Most other states lack active chronic wasting disease surveillance programs, so the full extent of the disease is not known with certainty.

(8) DATCP currently registers captive cervid herds, other than white-tail deer herds. DNR currently licenses captive white-tail deer herds. Since 1998, DATCP has sponsored a voluntary program to monitor for chronic wasting disease among the captive herds that it registers. Approximately 50 herd owners currently participate in this program.

(9) Since chronic wasting disease was confirmed in this state, there has been widespread public concern about the disease. The public has expressed concern about the health of free-ranging deer and elk, and about potential threats to humans, livestock and deer-related businesses. Hunters and consumers have expressed food safety concerns. There is currently no scientific evidence to suggest that chronic wasting disease is transmissible to non-cervids or to humans. But there is limited scientific knowledge about the disease, and this lack of knowledge has contributed to public concerns.

(10) In order to protect the public peace, health, safety and welfare, it is necessary to take immediate steps to prevent and control the spread of chronic wasting disease in this state. Among other things, it is necessary to impose further controls on the import and movement of captive cervids and to

implement a mandatory monitoring program. DATCP may adopt rules to implement these measures.

(11) Normal rulemaking procedures require up to a year or more to complete. A temporary emergency rule is needed to protect the public peace, health, safety and welfare, pending the adoption of longer-term rules. This emergency rule will implement essential prevention and control measures on an immediate, interim basis.

Publication Date: April 9, 2002
Effective Date: April 9, 2002
Expiration Date: September 6, 2002
Hearing Date: May 22, 2002
Extension Through: May 31, 2003

2. Rules adopted revising **ch. ATCP 96** relating to milk producer security.

Finding of emergency

(1) The Legislature, in 2001 Wis. Act 16, repealed and recreated Wisconsin's agricultural producer security program. The new program is codified in ch. 126, Stats. (the "new law"). The new law takes effect, for milk contractors, on May 1, 2002. The new law is intended to protect milk producers against catastrophic financial defaults by milk contractors.

(2) The new law applies to milk contractors, including dairy plant operators, producer agents and other milk handlers, who procure producer milk in this state. Under the new law, milk contractors must be licensed by the Wisconsin department of agriculture, trade and consumer protection (DATCP). Milk contractors must pay license fees and do one or more of the following:

(a) Contribute to Wisconsin's agricultural producer security fund, to help secure milk payments to milk producers.

(b) File security with DATCP.

(c) File financial statements with DATCP, showing that the contractor meets minimum financial standards specified in ch. 126, Stats.

(3) The new law regulates producer agents (who market milk and collect payment for milk producers, without taking title to the milk), but treats them differently than other milk contractors. Producer agents may have lower fund participation requirements, and may file smaller amounts of security, than other milk contractors. The program may provide correspondingly less compensation to producers if a producer agent defaults.

(4) It is important to clarify the following matters before the new law takes effect for milk contractors on May 1, 2002:

(a) The treatment of dairy plant operators who provide custom processing services to milk producers, without marketing or taking title to milk or dairy products.

(b) The treatment of producer agents. Under s. 126.51, Stats., DATCP must adopt rules for milk contractors who wish to qualify as producer agents under the new law.

(c) The treatment of persons who market only processed dairy products for milk producers, without procuring, marketing or processing raw producer milk.

(d) The method by which milk contractors calculate and report milk payment obligations, for the purpose of calculating fund assessments and security requirements under the new law.

(5) Under s. 126.81 (4), Stats., DATCP may require milk contractors to disclose their security and fund contribution status to milk producers. It is important for milk contractors to begin making these disclosures soon after the new law takes effect, so that producers can evaluate the financial risk

associated with milk procurement contracts. Disclosures are important, because not all milk contractors are required to participate in the agricultural security fund or file security with DATCP.

(6) It is not possible, by normal rulemaking procedures, to adopt these essential clarifications and disclosure requirements by May 1, 2002. DATCP must, therefore, adopt them by emergency rule. This emergency rule is needed to implement the new law, to protect the financial security of milk producers, to preserve fair competition in the dairy industry, and to avoid unnecessary confusion and expense for dairy businesses.

Publication Date: April 29, 2002
Effective Date: April 29, 2002
Expiration Date: September 26, 2002
Hearing Date: May 16, 2002
Extension Through: January 23, 2003

Commerce

(Financial Assistance to Businesses and Communities, Chs. Comm 105 to 128)

The Wisconsin Department of Commerce proposes an order to create **ch. Comm 118** relating to the Agricultural Development Zone Program.

Finding of emergency

The Department of Commerce finds that an emergency exists and that adoption of the rule is necessary for the immediate preservation of public health, safety and welfare.

Facts constituting the emergency are as follows:

1. In accordance with s. 560.798 (5), Stats., the Department of Commerce has the responsibility to promulgate rules for the operation of an agricultural development zone to provide for the attraction, promotion, retention, and expansion of agricultural businesses in the state.

2. Section 560.798 (3), Stats., makes available certain tax benefits for certified business within an agricultural development zone; tax credits first apply to tax years beginning on or after January 1, 2003.

3. Commerce, being the agency with primary authority for economic development in the state, recognizes that there is a verified need to attract, promote retain, and expand Wisconsin agricultural businesses. For example, over the past 50 years, Wisconsin has experienced an average of six dairy farms leaving production each day.

4. In the year 2001, state milk production declined by more than one billion pounds, resulting in a near 5% decline in milk production.

5. Western states have increased their cheese production, while Wisconsin experiences declining milk production and dairy processing activities; this program would immediately assist Wisconsin in regaining its prominence in dairy and dairy processing production.

6. The creation of this program combined with other economic development programs in the state is expected to increase the competitiveness of the Wisconsin dairy industry.

This emergency rule is being created in order that the process of designating an agricultural development zone be commenced as soon as possible and that such eligible businesses may become certified and participate in the tax benefits through the Agricultural Development Zone Program.

Publication Date: August 13, 2002
Effective Date: August 13, 2002
Expiration Date: January 10, 2003
Hearing Date: October 16, 2002
Extension Through: March 10, 2003

Corrections

Rules adopted amending **ch. DOC 316**, relating to medical, dental and nursing copayment charges.

Exemption from finding of emergency

The department of corrections adopts this emergency rule pursuant to the statutory requirements of 2001 Wis. Act 109. The Act provides, in relevant part:

“Using the procedure under section 227.24 of the statutes, the department of corrections shall promulgate the rules that are required under section 302.386 (4) (a) of the statutes relating to the deductible, coinsurance, copayment, or similar charge that must be imposed under section 302.386 (3) (b) of the statutes.”

and,

“Notwithstanding section 302.386 (3) (b) of the statutes, the rules shall require the department to require that, subject to the exception and waiver provisions under section 302.386 (3) (c) of the statutes, each person to whom section 302.386 (1) of the statutes applies pay a deductible, coinsurance, copayment, or similar charge of at least \$7.50 for each request that the person makes for medical or dental services.”

Currently, the department’s administrative rules provide for a \$2.50 copayment under such circumstances as described above. This emergency rule raises the copayment to \$7.50 as directed by 2001 Wis. Act 109.

In addition, pursuant to 2001 Wis. Act 109 the department makes no finding of emergency in promulgating this rule. 2001 Wis. Act 109 expressly exempts the department from the statutory requirements to do so.

Publication Date: September 3, 2002
Effective Date: September 3, 2002
Expiration Date: January 31, 2003
Hearing Date: November 18, 2002

Health and Family Services (Medical Assistance, Chs. HFS 100—)

Rules adopted creating **ch. HFS 109**, relating to SeniorCare.

Finding of emergency

The Department of Health and Family Services finds that an emergency exists and that the rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

The high cost of prescription drugs in Wisconsin and nationwide are especially burdensome on the elderly, many of whom live on a fixed income. Through 2001 Act 16, Wisconsin has addressed the problem those increasingly high costs pose to the elderly by creating section 49.688 of the statutes. Section 49.688 directs the Department to develop and administer the program of prescription drug benefits for the elderly that has come to be known as “SeniorCare.” The

statute also directs the Department to develop administrative rules for implementing SeniorCare, which the Department has done by creating a new chapter of administrative rules, HFS 109. The rules address a variety of issues associated with operating the program in accordance with section 49.688, Stats., including specifying:

- what prescription drugs are covered;
- who is eligible for benefits and services;
- how the Department determines household income for the program’s eligibility determination;
- how the Department monitors compliance by pharmacists and pharmacies; and
- mechanisms for preventing fraud and abuse.

The Department drafted these rules to parallel the prescription drug provisions of the existing Medicaid rules in chs. HFS 101 to 108. The Department developed the program’s administrative elements in consultation with an advisory committee composed of representatives of physicians, counties, seniors and pharmacies.

While the Department is currently in the process of promulgating ch. HFS 109 as permanent rules, s. 49.688 (5) (a) and (7) (a), Stats., mandate the initiation of some SeniorCare program elements beginning on September 1, 2002. To meet this deadline, the Department is issuing ch. HFS 109 as emergency rules to preserve the public welfare.

Publication Date: September 1, 2002
Effective Date: September 1, 2002
Expiration Date: January 29, 2003
Hearing Date: October 10, 2002

Health and Family Services (3) (Health, Chs. HFS 110—)

1. Rules adopted creating **s. HFS 115.04 (9) to (13)**, relating to screening newborn infants for congenital disorders.

Finding of emergency

The Department of Health and Family Services finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

The early identification of particular congenital and metabolic disorders that are harmful or fatal to persons with the disorders is critical to mitigating the negative effects of such disorders. Therefore, Wisconsin Statute 253.13 requires that every infant born be subjected to blood tests for congenital and metabolic disorders, as specified in administrative rules promulgated by the Department. Parents, however, may refuse to have their infants screened for religious reasons. The Department has issued ch. HFS 115, Screening of Newborns for Congenital and Metabolic Disorders, to administer this statutory requirement. Currently, s. HFS 115.04 lists eight congenital and metabolic disorders for which the state hygiene laboratory must test newborn blood samples.

In determining whether to add or delete disorders from the list under s. HFS 115.04, s. HFS 115.06 directs the Department to seek the advice of persons who have expertise and experience with congenital and metabolic disorders. For this purpose, the Department established the Wisconsin Newborn Screening Umbrella Advisory Group. Section HFS 115.06 also lists six criteria on which the Department must base its decision to add to or delete disorders from s. HFS 115.04. These criteria are:

1. Characteristics of the specific disorder, including disease incidence, morbidity and mortality.
2. The availability of effective therapy and potential for successful treatment.
3. Characteristics of the test, including sensitivity, specificity, feasibility for mass screening and cost.
4. The availability of mechanisms for determining the effectiveness of test procedures.
5. Characteristics of the screening program, including the ability to collect and analyze specimens reliably and promptly, the ability to report test results quickly and accurately and the existence of adequate follow-up and management programs.
6. The expected benefits to children and society in relation to the risks and costs associated with testing for the specific condition.

In consideration of these criteria, the Wisconsin Newborn Screening Umbrella Advisory Group recently recommended that the Department add five aminoacidopathies, i.e., amino acid-related disorders, to the eight disorders currently screened for and listed in s. HFS 115.04. These disorders are:

- Maple Syrup Urine Disease;
- Homocystinuria;
- Tyrosinemia;
- Citrullinemia; and
- Argininosuccinic Acidemia.

Persons with these disorders can experience serious medical consequences such as failure-to-thrive, developmental delays, seizures, mental retardation and death.

The additional costs associated with these five additional screening tests is less than a dollar per baby screened because the amino acids in the blood sample are measured simultaneously with the acylcarnitines for Fatty Acid Oxidation and Organic Acidemias. In the absence of this screening, the Department estimates the annual Wisconsin costs for these disorders to be \$144,909. The Department also estimates the annual Wisconsin costs of this screening to be \$29,134. Therefore, the cost benefit from these five screening tests is \$115,775.

The Advisory Group also recommended that the Department immediately begin screening newborns for these additional disorders. Before this testing can begin, the Department must change its rules to add the five new disorders to the existing list under s. HFS 115.04. Permanent rules require six or more months to take effect. Collectively, these disorders occur, on average, once in every 30,000 births. Given an annual birthrate of about 68,000 in Wisconsin, delaying the effective date of these rules by six or more months may result in one to three persons being born with one of these five disorders and that fact escaping detection. To eliminate this possibility and ensure that newborn testing begins as soon as possible, the Department has chosen to promulgate this rule change on an emergency basis while the Department promulgates a permanent rule.

While the Department is currently in the process of promulgating these amendments to the permanent rules, the Department must implement these changes immediately to preserve the public health. Therefore, the Department is issuing these identical amendments as an emergency order.

Publication Date: October 12, 2002
Effective Date: October 12, 2002
Expiration Date: March 11, 2003
Hearing Date: December 17, 2002

2. Rules adopted amending **chs. HFS 110 to 113**, relating to licensing of EMT's and certification of first responders, incorporating responding to acts of terrorism as a training component.

Finding of emergency

The Department of Health and Family Services finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

2001 Wisconsin Act 109 amended section 146.50 (6) (a) 2., (b) 2. and (8) (b) 3. by adding the requirement that as of January 1, 2003, to receive an initial or renewed EMS license or first responder certification, the applicant must have received training in response to acts of terrorism. Section 146.50 (6) (b) 2. of the statutes specifically directs the Department, in conjunction with the technical college system board, to promulgate rules specifying training, education, or examination requirements for training in response to acts of terrorism. The training must be completed by all persons desiring to receive an initial or renewed license or certification after January 1, 2003. To enforce and administer this statutory requirement, the Department must revise the administrative rules associated with the licensing of Emergency Medical Technicians (EMTs) – Basic and EMTs–Basic IV (found in ch. HFS 110), EMTs– Intermediate (found in ch. HFS 111), EMTs – Paramedic (found in ch. HFS 112) and First Responders (found in ch. HFS 113.)

The required rule changes will remove any question of whether the department had the authority to require persons to receive training for acts of terrorism. Such training is needed to promote the public's health and safety and due to the statutory effective date of January 1, 2003, the department is promulgating these rule changes through an emergency order. The department is also proceeding with promulgating these rule changes on a permanent basis through a proposed permanent rulemaking order.

Publication Date: December 31, 2002
Effective Date: December 31, 2002
Expiration Date: May 30, 2003

3. Rules adopted revising **ch. HFS 163**, relating to certification for the identification, removal and reduction of lead-based paint hazards.

Finding of emergency

The Department of Health and Family Services finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is as follows:

The presence of lead in paint and soil is believed to contribute to the level of lead found in the blood of persons, particularly children, living in the area. The federal Environmental Protection Agency (EPA) maintains regulations intended to reduce environmental lead hazards principally by:

- Specifying the thresholds for an environment to be considered as presenting a lead-based paint hazard; and
- Requiring training and certification of persons who perform lead hazard reduction activities or lead investigation activities so those persons are best able to prevent exposure of building occupants to hazardous levels of lead.

The federal government may authorize a state to administer its own lead training and certification program if the state has regulations governing certification of persons for the identification, removal and reduction of lead-based paint hazards that are as protective as those specified in the EPA regulations.

In Wisconsin, the Department of Health and Family Services administers the lead training and certification program. The Department has established administrative rules under chapter HFS 163 to guide its administration of the program. In 2000, the Department began work to extensively revise ch. HFS 163 to implement 1999 Wisconsin Act 113, which established a program for registering lead-free and lead-safe properties. The proposed rule was released for public review and comment on December 12, 2000. On January 5, 2001, in volume 66, number 4 of the Federal Register (66 FR 1206-1239), the EPA published regulations that established standards for lead-based paint hazards under 40 CFR Part 745, Subparts D and L, and required states with authorized lead training and certification programs under 40 CFR Part 745, Subpart Q, to implement the regulations by February 5, 2003. Because the proposed rule had already been released for public review and comment and the EPA standards for lead-based paint hazards would affect the lead-safe property standards under ch. HFS 163, the Department decided to educate the public about the new EPA standards for lead-based paint hazards before revising the rule to reflect the new EPA standards. If Wisconsin is to continue administering its program of training and certification of persons performing lead abatement and lead investigation activities (in lieu of a program operated by the EPA), the Department must revise ch. HFS 163 by February 3, 2003 to comply with those most recent and final federal regulations at 40 CFR Part 745, Subparts D, L and Q.

If the Department does not make these changes to ch. HFS 163, Wisconsin could lose some or all of its Federal lead grant funding and EPA's authorization for the Department's lead program. Since the federal regulation provides the first measurable definition of a lead-based paint hazard, the Department needs to adopt this definition in order to protect the state's citizens.

The most significant modification to the rules pertains to the permissible level of residual lead dust in window troughs. The current lead-safe property standards expressed under s. HFS 163.42 allow a higher level of lead dust in window troughs than is permissible in corresponding EPA regulations and also do not require properties to be free of soil-lead hazards. Making the changes to s. HFS 163.42 through this order will mean that persons removing lead-based paint hazards may need to clean window troughs more thoroughly to reduce the dust-lead levels and also may need to cover bare soil. Most lead investigation professionals in Wisconsin already perform lead investigation work in conformance with the more stringent lead levels specified in EPA's regulations to ensure a more protective environment for residents, especially when conducting clearance following abatement activities. Conformance with the more stringent EPA regulations is also currently required when lead hazard reduction work is performed using federal funds. Since most lead investigation professionals already use the more protective EPA standards, the rule changes should have little effect on persons conducting lead investigation or abatement activities.

Among the changes the Department is making through this order, the most significant are the following:

1. Prior to this order, section HFS 163.14 (5) (c) 8. required that, following lead abatement, a window well or trough may contain no more than 800 micrograms of lead dust per square foot. The revised EPA regulations specify a maximum level of 400 micrograms per square foot. To comply with federal

regulations, the Department is reducing the permissible threshold to 400 micrograms per square foot.

2. Prior to this order, section HFS 163.15 (2) specified that a lead hazard is present in soil when the arithmetic mean for laboratory results for samples of bare soil is equal to or greater than 2,000 parts per million. The EPA revised regulations state that a lead hazard is present in soil when bare soil in a play area contains total lead content equal to or exceeding 400 parts per million or when bare soil in the rest of the yard contains an average of 1,200 parts per million of lead. To comply with the federal regulations, the Department is reducing the permissible threshold to that specified by the EPA.

3. The Department is adding standards, as section HFS 163.15 (3), for determining when a lead-based paint hazard exists.

4. The Department is modifying section HFS 163.42 (1) (b) and (c) to require that all exterior painted components, regardless of their height above the ground, be free of deteriorated paint unless the paint is proved to be lead-free.

5. The Department is revising its standards for lead-safe property under s. HFS 163.42 (1) (f) and (j) to reflect these lower levels for lead in dust and soil.

6. Finally, the Department is revising section HFS 163.42 (1) (j) to require that there be no soil-lead hazard on registered lead-safe property.

Publication Date: January 3, 2003
Effective Date: January 3, 2003
Expiration Date: June 2, 2003

Insurance

Rules adopted amending s. **Ins 3.39**, relating to Medicare Supplement insurance policies.

Finding of emergency

The commissioner of insurance ("Commissioner") finds that an emergency exists and that promulgation of this emergency rule is necessary for the preservation of the public peace, health, safety and welfare. The facts constituting the emergency are as follows:

These changes clarify the persons eligible who have the right to have policies guaranteed issued. The changes track the recent revisions in the NAIC model act implementing the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act ("BIPA"), by January 1, 2003. In order to provide more certainty and provide guaranteed issue to the appropriate persons in Wisconsin, it is necessary that the changes be put into effect as soon as possible. In addition, since insurers are required to be in compliance with the Federal law, implementing this rule effective on the same date will allow insurers to modify their policies one time rather than two.

The Commissioner is sending contemporaneously with this Emergency Rule, the permanent rule, Clearinghouse No. 02-118, to the Legislature for review. A hearing on the permanent rule, pursuant to published notice thereof, was held on November 7, 2002. The Office has received comment and revised the rule as necessary to incorporate comments from the public and as contained within the Clearinghouse Report.

Publication Date: December 16, 2002
Effective Date: December 16, 2002
Expiration Date: May 14, 2003

Natural Resources (4) **(Fish, Game, etc., Chs. NR 1–)**

1. Rules adopted revising **chs. NR 10 and 45**, relating to the control and management of chronic wasting disease.

Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The state legislature has delegated to the department rule-making authority in 2001 Wisconsin Act 108 to control the spread of Chronic Wasting Disease (CWD) in Wisconsin. CWD poses a risk to the health of the state's deer herd and citizens and is a threat to the economic infrastructure of the department, the state, its citizens and businesses.

Publication Date: July 3, 2002
Effective Date: July 3, 2002
Expiration Date: November 30, 2002
Hearing Date: August 12, 2002
Extension Through: April 1, 2003

2. Rules adopted repealing and recreating **s. NR 20.20 (49) (d) and (61) (c)**, relating to the closure of carp fishing on Cedar Lake and connected waters in Polk and St. Croix counties.

Finding of emergency

The Department of Natural Resources finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is:

Spring viremia of carp virus is of international animal health concern. The virus affects fishes in the minnow family in nature. Minnows are extremely important forage fish for many important sport fishes in Wisconsin and are also important to the bait and aquaculture industries. Assuring the health of minnow populations and preventing the spread to other waters is important in preserving the welfare of Wisconsin citizens by protecting popular and economically valuable sport and bait fisheries. Little is currently known about the extent of the virus and until we can increase our knowledge, this closure will limit the potential spread from transport of fish and/or their parts and fluids.

Publication Date: October 3, 2002
Effective Date: October 3, 2002
Expiration Date: March 2, 2003
Hearing Date: November 11, 2002

3. Rules adopted amending **s. NR 25.06 (1) (a) 1. to 3.**, relating to commercial fishing in Lake Superior.

Finding of emergency

The waters of Lake Superior were not part of the extensive off-reservation treaty rights litigation known as the Voigt case. The parties stipulated that the Lake Superior rights would be dealt with, to the extent possible, by agreement rather than litigation. This rule represents the implementation of the most recent negotiated amendments to the agreement between the State and the Red Cliff and Bad River Bands.

These amendments incorporate the results of a new population estimate that was not available previously. In order to comply with the terms of the agreement, the State must change its quotas and commercial fishing regulations at the earliest possible date. Failure of the State to do so will not only deprive state fishers of increased harvest opportunities available under the agreement, but could also jeopardize the agreement, putting the entire Lake Superior fishery at risk of litigation.

Publication Date: November 1, 2002
Effective Date: November 1, 2002
Expiration Date: March 31, 2003
Hearing Date: December 13, 2002

4. Rules adopted revising **chs. NR 16 and 19** and creating **ch. NR 14**, relating to captive wildlife.

Finding of emergency

2001 Wis. Act 56 was not enacted until April of 2002. It required standards for captive animals held under licenses issued under ch. 169, Stats., to be in place by January 1, 2003, the effective date of the change from licensing under ch. 29, Stats., to ch. 169, Stats. As the use of the permanent rule process would not allow these standards to be in place by January 1, 2003, the Department had no choice but to use the emergency rule procedures. Failure to have standards in place would result in the lack of humane care standards for wild animals held in captivity and the lack of pen standards necessary to prevent the interactions between captive and wild animals.

Publication Date: December 20, 2002
Effective Date: January 1, 2003
Expiration Date: May 31, 2003

Nursing

Rules adopted creating **s. N 4.10**, relating to malpractice insurance coverage for nurse-midwives.

Exemption from finding of emergency

Under Section 13 of 2001 Wisconsin Act 52, the Board of Nursing is directed to use the procedure under s. 227.24, Stats., in promulgating the rules required under s. 441.15 (5) (b) of the statutes. Under that procedure, the Board of Nursing may promulgate this rule for the period before permanent rules become effective. The Board of Nursing need not provide evidence of the necessity of preservation of the public peace, health, safety, or welfare in promulgating this rule.

Analysis prepared by the Department of Regulation

Statutes authorizing promulgation: ss. 15.08 (5) (b) and 227.11 (2), Stats., and ss. 441.15 (2) (c), 441.15 (3) (a) 3. and 441.15 (5), as created by 2001 Wisconsin Act 52, and s. 441.15 (3) (bm), as amended by 2001 Wisconsin Act 52.

Statutes interpreted: s. 441.15 (2) (c), 441.15 (3) (a) 3., 441.15 (3) (bm) and 441.15 (5) (b), Stats.

2001 Wisconsin Act 52 makes a number of changes to the provisions affecting nurse-midwives, including that licensed nurse-midwives carry malpractice insurance in an amount determined by rules to be promulgated by the Board of Nursing. This rule establishes those requirements relating to malpractice coverage for nurse-midwives.

Using the procedure under s. 227.24, Stats., the Board of Nursing will promulgate the rules as created by 2001 Wisconsin Act 52, for the period before permanent rules become effective.

Publication Date: November 5, 2002

Effective Date: November 5, 2002

Expiration Date: April 4, 2003

State Treasurer

Rules adopted creating **ch. Treas 1** relating to the Wisconsin College Savings Program Board.

Exemption from finding of emergency

Section 15 (1), 2001 Wis. Act 7 provides an exemption from a finding of emergency for the adoption of ch. Treas 1.

Analysis prepared by the Office of the State Treasurer

Statutory authority: Section 14.64 (2) (e), Stats., and section 15, 2001 Wis. Act 7.

Statutes interpreted: s. 14.64 *et seq.*, Stats.

The Wisconsin College Savings Program Board establishes a rule for the operation of the College Savings Program. The rule is designed to grant flexibility to program participants wherever possible, while enabling the State and its private-sector partners to administer the program in a manner that protects the program's financial integrity and viability. Maintaining eligibility as a "qualified tuition program" pursuant to section 529 of the Internal Revenue Code [26 USC 529] is another primary objective. "529" programs are eligible for a number of federal tax benefits that are attractive to families saving for future college costs. Significant features of the rule are addressed below:

Sections Treas 1.03, 1.04 and 1.05 describe who may open an account and how to open an account. Section Treas 1.06 discusses designating a successor owner and describes how to change ownership of an account. Sections Treas 1.07 and 1.08 define the account beneficiary and how to change the beneficiary on an account.

Section Treas 1.09 details how to make contributions to an account, including minimum and maximum contribution limits, and how to "roll over" an account balance to another section 529 program. IRS requirements relating to investment direction are also detailed.

Sections Treas 1.11, 1.12 and 1.13 describe account withdrawals, distributions and refunds. Special circumstances are also provided for in these sections, such as the death or disability of the beneficiary or receipt of a scholarship by a beneficiary. Section Treas 1.14 sets forth conditions under which the Board may terminate an owner's account. Sections Treas 1.15 and 1.16 address related fees and penalties.

Publication Date: January 7, 2002

Effective Date: January 7, 2002

Expiration Date: See Section 15, 2001 Wis. Act 7

Hearing Date: March 5, 2002

Veterans Affairs

Rules adopted amending **s. VA 12.02 (7) and (16)**, relating to the maximum loan amount under the personal loan program.

Finding of Emergency

The Department of Veterans Affairs finds that an emergency exists and that a rule is necessary for the

immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is as follows:

The Department administers a personal loan program that may be used by veterans and their dependents for various statutory purposes. The purposes include debt consolidation, payment of delinquent child support, education expenses, and medical and funeral expenses, and the purchase of a mobile home or business property. The current maximum loan amount, set by the Department at sec. VA 12.02 (7), Wis. Adm. Code, is \$10,000. The permissible statutory maximum loan amount may be \$15,000, as set by the Department by administrative rule.

The Department proposes to raise the amount to the statutory maximum for several compelling reasons. Raising the maximum loan amount will help stimulate the economy by providing additional resources for veterans and their families. Due to the state of the economy, veterans and their families have a significant need for financial assistance in the form of below market interest rate loans. Additionally, the personal loan program is the primary source of revenue for the veterans trust fund. Immediate infusion of additional assets in the form of personal loans will provide significant financial support for the trust fund. It is expected that increasing the maximum loan amount will result in approximately \$4,000,000 of new loan assets over the 8-month period in which it would take to promulgate this rule change using the regular promulgation procedure.

Publication Date: August 5, 2002

Effective Date: August 5, 2002

Expiration Date: January 2, 2003

Hearing Date: December 6, 2002

Extension Through: March 2, 2003

Workforce Development (Public Works Const. Contracts, Chs. DWD 290-294)

Rules adopted amending **s. DWD 290.155 (1)**, relating to the annual adjustment of thresholds for application of prevailing wage rates.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

The Department of Workforce Development is acting under its statutory authority to annually adjust thresholds for the application of prevailing wage laws on public works projects. The thresholds are adjusted in accordance with any change in construction costs since the last adjustment. The last adjustment was initially by emergency rule in January 2002 based on changes in the construction cost index in 2001. The Department uses the construction cost index in the December issue of the *Engineering News-Record*, a national construction trade publication, to determine the change in construction costs over the previous year. The current construction cost index indicates a 2.7% increase in construction costs in 2002. This increase in construction costs results in an increase in the threshold for application of the prevailing wage laws from \$36,000 to \$37,000 for single-trade projects and from \$175,000 to \$180,000 for multi-trade projects.

If these new thresholds are not put into effect by emergency rule, the old thresholds will remain effective for approximately 7 months, until the conclusion of the permanent rule-making process. Between January 1, 2003, and August 1, 2003, a single-trade project with a minimum estimated project cost of more than \$36,000 but less than \$37,000 or a multi-trade project with an estimated cost of more than \$175,000 but less than \$180,000 would not be exempt from the prevailing wage laws, as they would be if the emergency rule were promulgated. The threshold

adjustments for application of the prevailing wage laws are based on national construction cost statistics and are unlikely to be changed by the permanent rule-making process. The Department is proceeding with this emergency rule to avoid imposing an additional administrative burden on local governments and state agencies.

Publication Date: December 27, 2002

Effective Date: January 1, 2003

Expiration Date: May 31, 2003

Scope statements

Agriculture, Trade and Consumer Protection

Subject

Ch. ATCP 29, relating to pesticide use and control. *Objective of the rule.* Update and clarify current rules regulating the use of pesticides, certification of pesticide applicators, registration of pesticide products, and fees administered under this rule.

Policy analysis

DATCP regulates distribution and use pesticides under ss. 94.67 to 94.71, Stats. Pesticides are substances or mixtures of substances labeled or intended for use in preventing, destroying, repelling or mitigating any pest, or as a plant regulator, defoliant or desiccant.

Companies who manufacture and label pesticides must be licensed to distribute pesticides in Wisconsin. These pesticides must be properly labeled, and in most cases registered with the US Environmental Protection Agency (EPA). DATCP may register pesticides for use in Wisconsin to address special local needs (SLN). These SLN registrations are subject to EPA review. Fees are assessed and collected by DATCP for pesticides registered for use in Wisconsin based on the type and quantity of pesticide distributed.

Applicators of those pesticides classified as “Restricted–Use” by EPA, and all commercial applicators of any pesticide must be certified as competent by DATCP in the appropriate category for the intended pesticide use and site. The current rule identifies 19 categories and sub–categories of pesticide use.

The rule includes requirements related to; labeling of pesticides; general prohibitions; pesticide use including recordkeeping and reporting, posting of treated areas, providing notice of pesticide application; and spill containment and recovery at mixing/loading sites.

DATCP has adopted rules under ch. ATCP 29, Wis. Adm. Code, to regulate pesticides and their use. DATCP proposes to revise its current rules to:

- Clarify and update pesticide applicator certification categories and consider creating additional categories.
- Clarify requirements related to pesticide use in schools and on school grounds.
- Clarify standards for issuing special local needs registrations and consider a fee increase for these registrations.
- Clarify and update requirements related to pesticide spill containment and recovery.
- Require development of integrated pest management plans prior to making pesticide applications to urban sites that are five acres or larger in size.
- Make other changes to clarify and update current rule provisions.

Policy alternatives

No change. If DATCP takes no action, current rules will remain in effect. This may result in unnecessary confusion

related to the regulation of pesticide and their use. The current rule does not address recent statutory changes, changes in the pesticide use industry, and new pesticide issues.

Statutory authority

Sections 93.07 and 94.69, Stats.

Staff time required

DATCP estimates that it will use approximately 0.5 FTE staff to develop this rule. This includes time required for investigation and analysis, rule drafting, preparing related documents, coordinating advisory committee meetings, holding public hearings and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

Agriculture, Trade and Consumer Protection

Subject

Ch. ATCP 60, relating to unpasteurized milk sales to consumers; prohibition and exemptions. *Objective of the rule.* Codify current law regulating the sale of unpasteurized milk and fluid milk products to consumers.

Policy analysis

DATCP regulates dairy farms and enforces food safety requirements under ch. 97, Stats., and ch. ATCP 60, Wis. Adm. Code. Section 97.24 (2), Stats., prohibits the sale of unpasteurized milk and fluid milk products to consumers. However, the statute provides certain exemptions, including an exemption for “incidental sales” of unpasteurized milk at the dairy farm where the milk is produced.

This rule will codify and clarify current law related to the sale of unpasteurized milk, including the current exemption for “incidental sales.” This rule is consistent with DATCP’s longstanding interpretation, which was inadvertently deleted from DATCP rules when those rules were comprehensively revised in 1994. This rule also codifies a recent contested case decision which held that a dairy farm owner may distribute raw milk produced on that farm to other owners of that farm.

Policy alternatives

Do nothing. This is not an acceptable alternative. Although this rule will not change current law, it will provide a clear statement of that law for dairy farmers and others. The DATCP Secretary, in a contested case decision, ordered the department to codify the decision by rule. A clear rule will protect public health, safeguard the existing rights of dairy farm owners, provide clear notice to affected persons, and avoid unnecessary legal conflicts.

Statutory authority

Sections 93.07 (1), 97.22 (8) and 97.24 (3), Stats.

Staff time required

DATCP estimates that it will use approximately 0.1 FTE staff time to develop this rule change. This includes research, drafting, preparing related documents, holding public hearings, and communicating with affected persons and groups. DATCP will assign existing staff to develop this rule.

Controlled Substances Board

Subject

Reschedule buprenorphine from a schedule V controlled substance to a schedule III controlled substance. *Objective of the rule.* By final rule of the Drug Enforcement Administration (DEA), adopted effective October 7, 2002, buprenorphine was reclassified from a schedule V controlled substance to a schedule III controlled substance under the federal Controlled Substances Act (CSA). Buprenorphine is currently only classified as a schedule V controlled substance under the Wisconsin Controlled Substances Act in ch. 961, Stats. The objective of the rule is to bring state classification of buprenorphine into conformity with federal law.

Policy analysis

Drugs that are classified as “controlled substances” under federal and state laws are subject to higher civil and criminal penalties for their illicit possession, distribution and use. Health care providers are also subject to greater record keeping requirements respecting their obtaining, prescribing and dispensing of such drugs. This is due to the fact that certain drugs have a greater likelihood of abuse, addiction and adverse consequences to patient health if utilized inappropriately, than do other drugs. In December 2001, the federal Department of Health and Human Services forwarded a recommendation to reschedule buprenorphine to schedule III of the Controlled Substances Act (CSA). The recommendation was based on a reevaluation of buprenorphine’s abuse potential and dependence profile in light of numerous scientific studies and years of human experience with the drug. The DEA completed an independent factor analysis in accordance with 21 U.S.C. 811 (c). The DEA made findings in accordance with 21 U.S.C. 812 (b) that buprenorphine has potential for abuse less than the drugs or other substances in schedules I and II, has currently accepted medical use in treatment in the United States, and abuse may lead to moderate or low physical dependence or high psychological dependence. These findings form the basis for the DEA action in rescheduling buprenorphine.

Statutory authority

Sections 961.11 and 961.18, Stats.

Staff time required

It is estimated 50 hours will be needed to promulgate the rule.

Elections Board

Subject

To create ch. EIBd 11, relating to the certification and training of chief election inspectors.

Policy analysis

Elections in the State of Wisconsin are conducted at an estimated 3500 polling places. Supervision of voting at each polling place is under the direction of the election inspectors and, particularly, the chief election inspector, appointed to serve that polling place. 2001 Wisconsin Act 16 requires the Elections Board to develop and implement a training and certification program for these chief election inspectors who are responsible for the conduct of elections at Wisconsin polling places. To implement the training program, the Elections Board’s staff has drafted a set of administrative rules regarding qualification and certification as a chief election inspector. Although the rule is required to be in place immediately, the state’s fiscal crisis has delayed the Board’s

ability to implement the training and certification of the estimated 3500 chief inspectors. Adoption of the rules regarding training and certification is the first step in implementation.

Statutory authority

Sections 5.05 (1) (f) and 227.11 (2) (a), Stats.

Staff time required

20 Hours.

Health and Family Services (Medical Assistance, Chs. HFS 100—)

Subject

To create and amend rules implementing the Family Planning Waiver as approved by the federal Centers for Medicare and Medicaid Services.

Policy analysis

The Department must create and amend selected provisions under chs. HFS 101, 102, 103 and 107, relating to Medical Assistance to implement a waiver of federal regulations that allows the Department to provide family planning coverage for females of child-bearing age. The federal waiver allows for the expansion of Medicaid services for a limited array of services to specific individuals who would not otherwise be eligible for Medicaid coverage. Through this expansion of coverage, the Department hopes to reduce the number of unwanted pregnancies in Wisconsin. Under the waiver, a woman of child-bearing age whose income does not exceed 185% of the federal poverty line will be eligible for most of the family planning services currently available under Medicaid, as described in existing s. HFS 107.21.

Statutory authority

Section 49.45 (10), Stats.

Staff time required

The Department estimates that this rulemaking order will take about 10 hours of staff time to develop.

Public Instruction

Subject

Parent Contracts for Pupil Transportation. *Objective of the rule.* The impetus for this rule is an on-going circuit court case involving a school district and the parent of a private school pupil living in that district. After the circuit court judge ordered the Department of Public Instruction to determine the amount of compensation provided in the parent contracts in question, the DPI held an administrative hearing in March, 2002. Both the circuit court judge and the administrative law judge have expressed the opinion that DPI should promulgate rules to assist school districts in applying the provisions of s. 121.55, Stats., relating to parent contracts for pupil transportation.

The rule is intended to clarify current law relating to procedures school districts must follow in offering parent contracts for transportation and to ensure greater consistency among school districts in the application of the law.

Policy analysis

DPI has not previously developed a formal policy to assist school districts in applying the provisions of s. 121.55, Wis. Stats., relating to parent contracts for pupil transportation. However, the administrative law judge’s proposed decision,

subsequently adopted by the DPI, provides some guidance in the interpretation of the relevant statutes.

The proposed rule would clarify the differences between two types of parent contracts now available for use by school districts and assist districts in calculating the amount of compensation to be provided in parent contracts for private school pupils under s. 121.55 (3).

Policy alternatives

Continue to allow each school district to interpret and apply statutory provisions relating to parent contracts for pupil transportation as it sees fit.

Statutory authority

Section 227.11 (2) (a).

Staff time required

The amount of time needed for rule development by department staff and the amount of other resources necessary are indeterminable. The time needed to create the rule language itself will be minimal. However, the time involved with guiding the rule through the required rule promulgation process is fairly significant. The rule process takes more than six months to complete.

Veterans Affairs

Subject

Section VA 2.01 (2) (b), relating to the expenditure limitation for dentures under the health care aid grant

program. *Objective of the rule.* The amendment to the rule would increase the expenditure cap for dentures under the health care aid grant program. The current cap is 25% of the annual expenditure authority for the health care aid grant program. Subject to further analysis, the Department is considering raising the cap to 50% of the annual program expenditure authority.

Policy analysis

The annual denture expenditure cap was last increased in October 1998. The cap was increased from \$50,000 to 25% of the annual program expenditure authority, which resulted in a \$300,000 annual cap. Despite the significant increase in denture expenditure authority that resulted from the amendment, the Department has been forced to terminate denture coverage within the first month of each subsequent fiscal year upon reaching the expenditure cap. Clearly, there is significant ongoing demand for this benefit. Dentures are not ordinarily covered by conventional health insurance plans or by the U. S. Department of Veterans Affairs. Thus, many eligible veterans are unable to secure this benefit in a timely manner. The proposed amendment would permit the Department to more adequately address this health care need by allowing additional resources to be devoted to this benefit.

Statutory authority

Section 45.35 (3), Stats.

Staff time required

Approximately 1 hour of Department of Veterans Affairs staff time will be needed to promulgate the rules.

Submittal of rules to legislative council clearinghouse

Please check the Bulletin of Proceedings – Administrative Rules for further information on a particular rule.

Athletic Trainers Affiliated Credentialing Board

Rule Submittal Date

On December 19, 2002, the Athletic Trainers Affiliated Credentialing Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 15.08 (5) (b) and 227.11 (2), Stats.

The proposed rule-making order relates to consulting physicians.

Agency Procedure for Promulgation

A public hearing is required and will be held on February 10, 2003 at 9:30 a.m. in Room 179A, 1400 East Washington Avenue, Madison, Wisconsin, 53702.

Contact Person

Pamela Haack, Paralegal
Office of Administrative Rules
(608) 266-0495

Health and Family Services

Rule Submittal Date

On December 23, 2002, the Department of Health and Family Services submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: Section 49.688, Stats.

This chapter of rules, HFS 109, is intended to replace emergency rules currently in effect that implement SeniorCare, a new prescription drug assistance program for Wisconsin residents who are 65 years of age or older and who meet the program's eligibility criteria.

The high cost of prescription drugs in Wisconsin and nationwide are especially burdensome on the elderly, many of whom live on a fixed income. Through 2001 Act 16, Wisconsin has addressed the problem those increasingly high costs pose to the elderly by creating section 49.688 of the statutes. Section 49.688 directs the Department to develop and administer the program of prescription drug benefits for the elderly that has come to be known as "SeniorCare." The statute also directs the Department to develop administrative rules for implementing SeniorCare, which the Department has done by creating a new chapter of administrative rules, HFS 109. The rules address a variety of issues associated with operating the program in accordance with section 49.688, Stats., including specifying:

- what prescription drugs are covered;
- who is eligible for benefits and services;
- how the Department determines household income for the program's eligibility determination;

– how the Department monitors compliance by pharmacists and pharmacies; and

– mechanisms for preventing fraud and abuse.

The Department drafted these rules to parallel the prescription drug provisions of the existing Medicaid rules in chapters HFS 101 to 108. The Department developed the program's administrative elements in consultation with an advisory committee composed of representatives of physicians, counties, seniors and pharmacies.

Agency Procedure for Promulgation

Public hearings under ss. 227.16, 227.17 and 227.18, Stats.; approval of rules in final draft form by the DHFS Secretary; and legislative standing committee review under s. 227.19, Stats.

Contacts

Al Matano, 267-6848
James Vavra, 261-7838

Health and Family Services

Rule Submittal Date

On December 27, 2002, the Department of Health and Family Services submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: Sections 146.50 (6) (b) 2. and (13) (a), 227.11 (2) (a) and 250.04 (7), Stats.

2001 Wisconsin Act 109 amended ss. 146.50 (6) (a) 2., (b) 2. and (8) (b) 3. by adding the requirement that as of January 1, 2003, to receive an initial or renewed EMS license or first responder certification, the applicant must have received training in response to acts of terrorism. Section 146.50 (6) (b) 2. of the statutes specifically directs the Department, in conjunction with the technical college system board, to promulgate rules specifying training, education, or examination requirements for training in response to acts of terrorism. The training must be completed by all persons desiring to receive an initial or renewed license or certification after January 1, 2003. To enforce and administer this statutory requirement, the Department must revise the administrative rules associated with the licensing of Emergency Medical Technicians (EMTs) – Basic and Emts– Basic IV (found in ch. HFS 110), EMTs– Intermediate (found in ch. HFS 111), EMTs – Paramedic (found in ch. HFS 112) and First Responders (found in ch. HFS 113.) These rules will replace identical emergency rules that will take effect on December 31, 2002.

Agency Procedure for Promulgation

Public hearings under ss. 227.16, 227.17 and 227.18, Stats.; approval of rules in final draft form by the DHFS Secretary; and legislative standing committee review under s. 227.19, Stats.

Contact Person

Jon Morgan 266-9781

Health and Family Services

Rule Submittal Date

On January 2, 2003, the Department of Health and Family Services submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: Section 46.297 (4) (a), Stats.

Under Wisconsin statute at ss. 196.218 and 46.297, Stats., and pursuant administrative rules under s. PSC 160.071 and Ch. HFS 78, respectively, Wisconsin operates two programs persons with hearing loss may use to obtain financial assistance for purchasing telecommunications equipment. The Public Service Commission (PSC) administers one program, known as the Telecommunications Equipment Purchase Program (TEPP) and the Department of Health and Family Services administers the other, known as the Telecommunication Assistance Program (TAP.) Both programs receive periodic legislative appropriations from which the financial assistance is provided to approved applicants. The PSC's TEPP program's funding is substantially larger than that available for the Department's TAP program. Moreover, the PSC's TEPP program requires applicants to pay \$100 towards the purchase of telecommunications equipment. To both conserve the limited TAP program funds and to better integrate the TAP program with the PSC TEPP program, with certain exceptions, the Department proposes reducing the existing assistance limit of \$600 per voucher to a maximum of \$100 per voucher, to be used in meeting the copayment requirement of the TEPP program. By so doing, the TAP program's more limited resources may be conserved, thereby extending the TAP program benefits to a greater number of potential recipients. To also make ch. HFS 78 more consistent with s. PSC 160.071, the Department proposes reducing the waiting period for subsequent applications from four years to three.

The current rules also limit TAP program financial assistance to one person per household. That constraint has prevented other household members with otherwise qualifying needs from receiving TAP program assistance. Moreover, the current household limitation is narrower than that used by PSC for the TEPP program. To better unify the eligibility criteria between the two programs, the Department proposes to modify the rule to eliminate the one person per household constraint and to expand the eligibility for financial assistance by loosening the definition of who shares a household with a deaf or severely hearing impaired person. The Department proposes to eliminate financial assistance for the installation of telecommunications equipment.. Finally, the Department also proposes to update the terminology used to refer to deaf and severely hearing impaired persons and to recognize the ability of other persons to qualify someone for TAP assistance.

Agency Procedure for Promulgation

Public hearings under ss. 227.16, 227.17 and 227.18, Stats.; approval of rules in final draft form by the DHFS Secretary; and legislative standing committee review under s. 227.19, Stats.

Contact Person

Alice Sykora, 266-3168

Pharmacy Examining Board

Rule Submittal Date

On December 13, 2002, the Pharmacy Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 15.08 (5) (b), 227.11 (2) and 450.02 (3), Stats.

The proposed rule-making order relates to notarized photographs.

Agency Procedure for Promulgation

A public hearing is required and will be held on February 12, 2003 at 9:15 a.m. in Room 179A at 1400 East Washington Avenue, Madison, Wisconsin, 53702.

Contact Person

Pamela Haack, Paralegal
Office of Administrative Rules
(608) 266-0495

Public Instruction

Rule Submittal Date

On December 17, 2002, the Department of Public Instruction submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule creates ch. PI 23, relating to ESEA intradistrict safe school transfer options.

Agency Procedure for Promulgation

Public hearings are scheduled for January 30, February 3 and 19, 2003.

The Division for Learning Support: Equity and Advocacy is primarily responsible for promulgation of this rule.

Contact Person

If you have questions regarding this rule, you may contact Michael Thompson, Federal Policy Initiatives Advisor, at (608) 266-3584.

Transportation

Rule Submittal Date

On December 20, 2002, the Department of Transportation submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: s. 227.14 (4m), Stats.

The proposed rule-making order relates to uniform traffic citation.

Agency Procedure for Promulgation

A public hearing is scheduled for February 3, 2003.

The division of motor vehicles, bureau of driver services is the organizational unit responsible for promulgation of the proposed rule.

Contact Person

Julie A. Johnson, Paralegal
Office of Administrative Rules
(608) 266-0495

Rule-making notices

Notice of Hearing

Athletic Trainers Affiliated Credentialing Board [CR 02-152]

NOTICE IS HEREBY GIVEN That pursuant to authority vested in the Athletic Trainers Affiliated Credentialing Board in ss. 15.085 (5) (b) and 227.11 (2), Stats., and interpreting ss. 448.95 (5m) and 448.956, Stats., the Athletic Trainers Affiliated Credentialing Board will hold a public hearing at the time and place indicated below to consider an order to amend ss. AT 3.02 and 4.02 (4); and to create s. AT 1.07 relating to consulting physicians and changing "athletic trainer" to "licensee."

Hearing Date, Time and Location

Date: **February 10, 2003**
 Time: 9:30 A.M.
 Location: 1400 East Washington Avenue
 Room 179A
 Madison, Wisconsin

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by February 21, 2003 to be included in the record of rule-making proceedings.

Analysis prepared by the Department of Regulation and Licensing

Statutes authorizing promulgation: ss. 15.085 (5) (b) and 227.11 (2), Stats.

Statutes interpreted: ss. 448.95 (5m) and 448.956, Stats.

Chapter AT 1 is silent regarding how many consulting physicians a licensee may have at any time, and the method to notify the board of a change in the consulting physician. Section 1 creates a new rule, s. AT 1.07, to clarify that an athletic trainer may only have one consulting physician at any one time, and requires the notification of the board within 5 days following the change in the athletic trainer's consulting physician.

Section 2 amends s. AT 3.02 because it does not currently explicitly provide that meeting continuing education requirements as a precondition for renewal does not apply to an application for renewal of a license that expires on the first renewal date after the date on which the board initially granted the license. Because of the license renewal cycle (July 1 of each even-numbered year) and the fact that licensees may be granted a license at any time prior to a renewal date certain licensees do not have a full two years prior to the first renewal date to satisfy continuing education requirements. Modification of the rule will place all renewals by licensees subject to a full two year opportunity to meet required continuing education requirements. This modification will assist first time renewal licensees by not requiring them to meet continuing education requirements on a potentially truncated schedule as a precondition for renewal.

Section 3 amends s. AT 4.02 (4) to insert the word "licensee" in place of "athletic trainer" for consistency of use throughout the rules.

Fiscal Estimate

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.

2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.

3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

Initial Regulatory Flexibility Analysis

These proposed rules will be reviewed by the department through its Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

Copies of Rule and Contact Person

Copies of this proposed rule are available without cost upon request to: Pamela Haack, Department of Regulation and Licensing, Office of Administrative Rules, 1400 East Washington Avenue, Room 171, P.O. Box 8935, Madison, Wisconsin 53708 (608) 266-0495

Notice of Hearing

Health & Family Services (Medical Assistance, Chs. HFS 100—) [CR 02-154]

NOTICE IS HEREBY GIVEN That pursuant to s. 49.688, Stats., the Department of Health and Family Services will hold a public hearing to consider the creation of ch. HFS 109, Wis. Adm. Code, relating to operation of the SeniorCare prescription drug assistance program.

Hearing Date, Time and Location

<u>Date & Time</u>	<u>Location</u>
January 27, 2003	Room 751
Monday	State Office Building
From 9:00 AM to 1:00 PM	1 West Wilson Street MADISON, WI

The hearing site is fully accessible to people with disabilities. Parking that accommodates people with disabilities is available in the parking lot behind the building, in the Monona Terrace Convention Center Parking Ramp or in the Doty Street Parking Ramp. People with disabilities may enter the building directly from the parking lot at the west end of the building or from Wilson Street through the side entrance at the east end of the building.

Analysis Prepared by the Department of Health and Family Services

The high cost of prescription drugs in Wisconsin and nationwide are especially burdensome on the elderly, many of whom live on a fixed income. Through 2001 Act 16, Wisconsin has addressed the problem those increasingly high costs pose to the elderly by creating section 49.688 of the statutes. Section 49.688 directs the Department to develop and administer the program of prescription drug benefits for the elderly that has come to be known as "SeniorCare." The

statute also directs the Department to develop administrative rules for implementing SeniorCare, which the Department has done by creating a new chapter of administrative rules, HFS 109. The rules address a variety of issues associated with operating the program in accordance with section 49.688, Stats., including specifying:

- what prescription drugs are covered;
- who is eligible for benefits and services;
- how the Department determines household income for the program's eligibility determination;
- how the Department monitors compliance by pharmacists and pharmacies; and
- mechanisms for preventing fraud and abuse.

The Department drafted these rules to parallel the prescription drug provisions of the existing Medicaid rules in chapters HFS 101 to 108. The Department developed the program's administrative elements in consultation with an advisory committee composed of representatives of physicians, counties, seniors and pharmacies.

Individuals with prescription drug coverage under other health plans will be eligible to enroll in SeniorCare. For those who already have a health insurance plan, SeniorCare will coordinate benefit coverage with that plan. Individuals enrolled in Medicaid will not be eligible for the new program, because Wisconsin Medicaid already provides prescription drug coverage.

These proposed rules are nearly identical to the emergency rules the Department issued on September 1, 2002. These rules differ in that they:

- clarify provisions relating to recipients' withdrawal from the program [HFS 109.11 (5) (d) and (e)];
- add a provision allowing the Department to redetermine a recipient's eligibility to participate if the Department receives a bad check for the recipient's program enrollment fee [HFS 109.11 (6) (d)];
- add provisions relating to the Department's ability to redetermine and how the Department may correct benefit levels [HFS 109.13 (5) and (6)];
- add the requirement that the department will reinstate the SeniorCare benefit period for a person who has requested a withdrawal from the program under s. HFS 109.11 (5) (d) if within 30 calendar days of the effective date of the withdrawal the Department receives the person's request to have SeniorCare benefits restored and the person meets all of the eligibility criteria under [HFS 109.14 (4) (c)];
- add circumstances under which the Department will begin recovery action against any SeniorCare participant to whom or on whose behalf an incorrect payment was made [HFS 109.62 (1) (b) to (d)];
- clarify that, in the event of a recipient's appeal of a Department action, the Department will not suspend, reduce or discontinue a recipient's benefits until a decision is rendered after the hearing [HFS 109.63 (2)]; and
- add a provision describing what will happen if program funding under s. 20.435 (4) (bv), Stats., is completely expended for the payments to SeniorCare providers [HFS 109.73].

Copies of Rule and Contact Person

The rules upon which the Department is soliciting comments and which will be the subject of these hearings are posted at the Department's administrative rules website at: http://www.dhfs.state.wi.us/News/Rules/Proposed_Final_Rules/Proposed_Rule_Index.htm

To find out more about the hearings or to request a copy of the proposed rules, you may also write, phone, or e-mail:

Alfred Matano
 Division of Health Care Financing
 P.O. Box 309, Room 350
 Madison, WI 53701-0309
 608-267-6848 or, if you are hearing impaired,
 (608) 266-1511 (TTY)
 matana@dhfs.state.wi.us

If you are hearing or visually impaired, do not speak English, or have other personal circumstances which might make communication at a hearing difficult and if you, therefore, require an interpreter or a non-English, large-print or taped version of the hearing document, contact the person at the address or phone number above. A person requesting a non-English or sign language interpreter should make that request at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

Written comments on the rules received at the above address no later than **January 28, 2003** will be given the same consideration as testimony presented at the hearing.

Fiscal Estimate

SeniorCare, established by 2001 Act 16, provides prescription drug assistance to Wisconsin residents over 65 years of age whose income does not exceed 240% of the federal poverty level (FPL) and to those whose income exceeds 240% of the FPL if their prescription drug expenditures bring their net income below the 240% limit (termed spenddown). Participants of SeniorCare are required to pay an annual \$20 enrollment fee and copayments of \$15 for each name brand drug and \$5 for each generic drug. In addition, participants with higher incomes (over 160% of FPL) must first spend \$500 (deductible) of their own funds annually for prescription drugs before SeniorCare will reimburse the participant's prescription drug expenditures.

On July 1, 2002, Wisconsin's application for a federal waiver to receive federal matching funds under the MA program for SeniorCare was approved for participants with income less than 200% of the Federal Poverty Level (FPL).

The administrative rule does not have a fiscal effect per se. The fiscal effect of the SeniorCare program was taken into account when the legislation was passed. However, a number of the assumptions underlying the fiscal estimate of the SeniorCare legislation have turned out to be incorrect.

Act 16 provided \$49,900,000 GPR under s. 20.435 (4) (bv), Stats., to support benefits under the SeniorCare program. Since the program first begins on September 1, 2002, funding was based on a ten-month period. In addition, when Act 16 was enacted, it was unclear whether Wisconsin would obtain a federal waiver. Consequently, funding was based on the assumption that federal funding would not be available.

Although the federal waiver will significantly reduce the need for state funds, the original cost projections substantially underestimated the benefit costs for SeniorCare. Current projections, that include the benefit of federal funding, anticipate that total SeniorCare costs in FY 03 will total \$100 million all funds and \$48 million GPR. The net result is that budgeted funding is projected to be adequate to fund projected costs of the program in FY 03.

Initial Regulatory Flexibility Analysis

The rules for the SeniorCare program apply to the Department, to families that are applicants or recipients of the health care coverage provided by SeniorCare and to county social service or human service departments that take applications and determine eligibility for SeniorCare. The rules will not directly affect small businesses as "small business" is defined in s. 227.114 (1) (a), Stats.

Notice of Hearings

Public Instruction [CR 02–151]

NOTICE IS HEREBY GIVEN That pursuant to ss. 115.28 (9) and 227.11 (2) (a), Stats., and interpreting s. 115.28 (9), Stats., the Department of Public Instruction will hold public hearings as follows to consider the creation of Ch. PI 23, relating to ESEA intradistrict safe school transfer options. The hearings will be held as follows:

Hearing Date, Time and Location

Date: **January 30, 2003**

Time: 4:00 – 6:00 p.m.

Location: Madison
GEF 3 Building
125 South Webster St.
Room 041

Date: **February 3, 2003**

Time: 4:00 – 6:00 p.m.

Location: Waukesha
Waukesha Public Library
321 Wisconsin Avenue
Cutler Room

Date: **February 19, 2003**

Time: 4:00 – 6:00 p.m.

Location: Tomahawk
CESA 9
304 Kaphaem Road
Conference Room

The hearing sites are fully accessible to people with disabilities. If you require reasonable accommodation to access a meeting, please call Michael Thompson, Federal Policy Initiatives Advisor, at (608) 266–3584 or leave a message with the Teletypewriter (TTY) at (608) 267–2427 at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided under the Americans with Disabilities Act.

Copies of Rule and Contact Person

The administrative rule is available on the internet at <http://www.dpi.state.wi.us/dpi/dfm/pb/safesch.html>. A copy of the proposed rule and the fiscal estimate may be obtained by sending an email request to lori.slauson@dpi.state.wi.us or by writing to:

Lori Slauson,
Administrative Rules and Federal Grants Coordinator
Department of Public Instruction
125 South Webster Street
P.O. Box 7841
Madison, WI 53707

Written comments on the proposed rules received by Ms. Slauson at the above address no later than February 24, 2003, will be given the same consideration as testimony presented at the hearing. Comments submitted via email will not be accepted as formal testimony.

Analysis by the Department of Public Instruction

Public Law 107–110 section 9532 reauthorizing the Elementary and Secondary Education Act (ESEA), requires each state receiving ESEA funds to establish and implement a statewide policy that allows students who attend persistently dangerous public schools to attend safe public schools. This provision also allows students who become victims of a violent criminal offense while in or on the grounds of a public school they attend to attend safe public schools. Each state

must certify to the U. S. Department of Education that it has developed an unsafe school policy.

To comply with the ESEA and to remain eligible to receive more than \$250 million in federal funds, the proposed rules:

- Specify criteria to determine whether a school is persistently dangerous.
- Define the terms “victim” and “violent criminal offense.”
- Specify school board notification and pupil transfer requirements.

Fiscal Estimate

The Elementary and Secondary Education Act (ESEA) requires each state receiving ESEA funds to establish and implement a statewide policy that allows students who attend persistently dangerous public schools to attend safe public schools. This provision also allows students who become victims of a violent criminal offense while in or on the grounds of a public school they attend to attend safe public schools. To meet the ESEA requirements, the rules 1) specify criteria to determine whether a school is persistently dangerous, 2) define the terms “victim” and “violent criminal offense,” and 3) specify school board notification and pupil transfer requirements.

It is assumed that very few school districts will be affected by these rules because:

- The rules only allow pupils to transfer from an unsafe school within a school district to another school or charter school within the same school district. Therefore, the rules will only affect school districts that have more than one elementary, middle or high school. Out of 426 school districts, approximately 190 school districts have more than one elementary, middle or high school.

- The rules will most likely only affect school districts with more than one middle or high school. It is unlikely that an elementary school would fall under the rule’s definition of schools that are “persistently dangerous” or that an elementary pupil would become a “victim of a violent criminal offense.” Of 426 school districts, approximately 80 school districts have more than one middle or high school.

- To be identified as persistently dangerous, a school must have expelled the greater of 1% of the pupils enrolled or 5 pupils for assault, endangering behaviors or weapons–related offenses. Schools must meet this criteria for 3 or more consecutive years. It is projected, based on current department data, that few schools will meet the rule’s criteria for 3 or more consecutive years.

It is not known how many schools have a pupil who has been a victim of a violent criminal offense while in or on the grounds of a public elementary or secondary school that the pupil attends. However, because the rules only affect school districts with more than one elementary, middle or high school and assuming it will be highly unusual for an elementary pupil to be a victim of a violent criminal offense while on school grounds, approximately 80 school districts may be affected.

Affected school districts may incur additional costs associated with the rule’s notification requirements and transporting pupils who reside 2 or more miles from the nearest public school they are entitled to attend. These costs are indeterminate.

It is important to note that these rules must be promulgated for Wisconsin to remain eligible to receive more than \$250 million in federal Elementary and Secondary Education Act funds.

These proposed rules are not expected to result in new costs for the department.

Initial Regulatory Flexibility Analysis

The proposed rules are not anticipated to have a fiscal effect on small businesses as defined under s. 227.114 (1) (a), Stats.

Notice of Proposed Rule

Revenue [CR 02-128]

NOTICE IS HEREBY GIVEN That pursuant to s. 227.11 (2) (a), Stats., and interpreting subchs. III and V of ch. 77, Stats., and according to the procedure set forth in s. 227.16 (2) (e), Stats., the Department of Revenue will adopt the following rules as proposed in this notice without public hearing unless, within 30 days after publication of this notice on **January 15, 2003**, it is petitioned for a public hearing by 25 natural persons who will be affected by the rule, a municipality which will be affected by the rule, or an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

Contact Person

Please contact Mark Wipperfurth at (608) 266-8253 or mwipperf@dor.state.wi.us, if you have any questions regarding this proposed rule order.

Analysis by the Department of Revenue

Statutory authority: s. 227.11(2) (a), Stats.

Statutes interpreted: subchs. III and V of ch. 77, Stats.

SECTION 1. Tax 11.001 (intro.), (1), (2) and (3) (intro.) are renumbered Tax 11.001 (1) and (2) (a) to (c), subs. (3) (a) to (d) are renumbered sub. (3) (a) 1. to 4., and subs. (4) to (6) are renumbered sub. (2) (d) to (f), to conform the numbering to Legislative Council Rules Clearinghouse ("Clearinghouse") standards. As renumbered:

- Subsection (1) is revised, to place the introductory clause for definitions in a separate subsection.
- Subsection (2) (a) is revised, to remove substantive provisions from the definition of "consumers."
- Subsection (2) (c) is revised, to reference the definition of "retailer" to the statutory definition and to remove a substantive provision.
- Subsection (3) (a) 1., 2. and 3. are revised, to reflect correct punctuation, per Clearinghouse standards and to move substantive provisions in the definition of "retailer" to a separate subsection.
- Subsection (2) (d) is revised, to include the football stadium tax in the definition of "stadium tax," allowed pursuant to 1999 Wis. Act 167, effective May 27, 2000.
- Subsection (2) (e) is revised, to reflect that the definition of "tax" includes county and stadium sales and use taxes.

SECTION 2. Tax 11.001(1) (title), (2) (title) and (3) (title) are created, to conform format to Clearinghouse standards.

Tax 11.001 (2) (intro.) is created, to provide an introductory clause for the definitions in pars. (a) to (f) as renumbered.

Tax 11.001 (3) (a) (intro.) is created, to provide an introductory clause for requirements with which retailers must comply.

Tax 11.001 (3) (b) is created, to move a substantive provision in the definition of "consumers" to a separate subsection.

SECTION 3. Tax 11.13 (1) (a) is revised, to remove a substantive provision from the definition of "continuous." The removed provision is covered in sub. (5) (b) 1.

Tax 11.13 (3) (b) is revised, to eliminate a reference to a fee requirement that is no longer applicable, and to add the name of the direct pay permit application form. The note at the end

of par. (b) is revised, to include the department's Internet address.

Tax 11.13 (5) (a) 2. (intro.) is revised, to provide that Form S-211 may be used as the written document in that subdivision.

Tax 11.13 (5) (b) 3. and the example following are revised, to eliminate references to obsolete exemption certificates.

An obsolete note at the end of Tax 11.13 (3) (a) is removed, and examples and notes following subs. (3) (c), (4) (b) and (5) (b) 3. are updated.

SECTION 4. Tax 11.14 (6) (a) 2. is revised, to reflect that a purchaser is subject to a sales tax rather than a use tax when it gives an exemption certificate claiming resale.

Tax 11.14 (13) (a) (intro.) is revised, to update a reference to a subsection in s. Tax 11.001.

Tax 11.14 (13) (b) is revised, to correct a typographical error.

SECTION 5. Tax 11.84 (1) (b) 1. and 2. are revised, to update punctuation, per Clearinghouse standards.

Tax 11.84 (1) (c) is revised, to update the name of the division in the Department of Transportation where aircraft are registered.

SECTIONS 6 AND 7. Tax 11.84 (2) (c) is renumbered Tax 11.84 (2) (c) (intro.) and revised, and par. (c) 1. to 3. are created, to provide an introductory clause and to set forth the taxable items in separate subdivisions.

Tax 11.84 (2) (c) 4. is created, to reflect the taxability of towing 1) banners that are not provided by the person towing them, 2) hang glider pilots, per the department's Private Letter Ruling, # W0124006 dated March 22, 2001, and 3) gliders.

SECTION 8. Tax 11.84 (4) (a) is revised, to reflect the taxability of towing hang glider pilots as discussed above.

Tax 11.84 (4) (c) is revised, to clarify a provision regarding the taxability of advertising banners towed by aircraft.

Text of Rule

SECTION 1. Tax 11.001 (intro.), (1), (2), (3) (intro.) and (a) to (d), (4), (5) and (6) (intro.), (a) and (b) are renumbered Tax 11.001 (1), (2) (a), (b) and (c), (3) (a) 1. to 4. and (2) (d), (e) and (f) (intro.), 1. and 2. As renumbered Tax 11.001 (1), (2) (a) and (c), (3) (a) 1. to 3. and (2) (d) and (e) are amended to read:

Tax 11.001 (1) Chapter Tax 11 is applicable to the state sales and use taxes imposed under subch. III of ch. 77, Stats., and is also applicable to the county and stadium sales and use taxes authorized under subch. V of ch. 77, Stats. ~~In this chapter, unless otherwise specified:~~

(2) (a) "Consumers" ~~are means~~ persons who purchase and use tangible personal property, ~~and sales to consumers are retail sales to which either the sales or use tax applies. Resale certificates should not be accepted from consumers.~~

(c) "Retailer" ~~means a person who sells taxable tangible personal property or a taxable service and who shall comply with all requirements imposed upon retailers, including: has the meaning in s. 77.51 (13), Stats.~~

(3) (a) 1. Obtaining a seller's permit for each place of business in this state;

2. Filing tax returns and paying tax;

3. Collecting use tax when applicable and remitting the tax with returns; ~~and.~~

(2) (d) "Stadium tax" means the local professional baseball park district sales or use tax or the local professional football stadium district sales or use tax authorized under subch. V of ch. 77, Stats.

(e) "Tax" means the Wisconsin sales or use tax in effect under ss. 77.52 (1) and (2) and 77.53 (1), Stats. "Tax" includes the taxes imposed under s. 77.71, Stats.

SECTION 2. Tax 11.001 (1) (title), (2) (title) and (intro.) and (3) (title), (a) (intro.) and (b) are created to read:

Tax 11.001(1) (title) APPLICABILITY.

(2) (title) DEFINITIONS.

(intro.) In this chapter, unless otherwise specified:

(3) (title) RETAILERS AND RETAIL SALES.

(a) (intro.) Retailers shall comply with all requirements imposed upon them, including all of the following:

(b) Sales to consumers are retail sales to which either the sales tax or the use tax applies.

SECTION 3. Tax 11.13 (1) (a), (3) (b) and (5) (a) 2. (intro.) and (b) 3. are amended to read:

Tax 11.13 (1) (a) "Continuous" use of a direct pay permit means that the purchase without tax applies to the purchase being made from the retailer and subsequent purchases from that retailer and is considered a part of each order given to the retailer. ~~The continuous use of the direct pay permit remains in force until the continuous use is voided by the direct pay permit holder.~~

(3) (b) Persons who wish to obtain a direct pay permit shall apply to the department using ~~the form prescribed by the department. A \$5 fee is required upon application. form S-101, "Application for Direct Pay Permit."~~

Note to Revisor: 1) Remove the note at the end of Tax 11.13 (3) (a).

2) Replace the note at the end of Tax 11.13 (3) (b) with the following:

Note: Form S-101 is available by writing to Wisconsin Department of Revenue, Mail Stop 5-77, PO Box 8902, Madison WI 53708-8902; calling (608) 266-2776; or downloading it from the department's web site, *www.dor.state.wi.us*.

3) In the example at the end of Tax 11.13 (3) (c), replace the year "1995" with "2002" twice.

4) Replace the note at the end of Tax 11.13 (4) (b) with the following:

Note: The permit to be cancelled and letter should be mailed to Wisconsin Department of Revenue, Mail Stop 5-77, PO Box 8902, Madison WI 53708-8902.

(5) (a) 2. (intro.) A form S-211, "Wisconsin Sales and Use Tax Exemption Certificate," or other written document containing either of which contains all of the following:

(b) 3. While the use of a direct pay permit is continuous, all purchases from a retailer, except those in sub. (6) (a) and (b), shall be made using the direct pay permit even though a ~~resale certificate, manufacturer's exemption certificate, certificate of exemption or other exemption~~ an exemption certificate requiring different documentation may apply.

Note to Revisor: Replace the example at the end of Tax 11.13 (5) (b) 3. with the following:

Example: On July 1, 2002, Company A begins using its direct pay permit when purchasing tangible personal property from Company B. Company A provides a written statement to Company B that the use of its direct pay permit will be continuous. All purchases of tangible personal property or taxable services, except those described in sub. (6) (a) and (b), by Company A from Company B on or after July 1, 2002, while continuous use is in effect, must be made without paying sales or use tax to the retailer using the direct pay permit. While continuous use of a direct pay permit is in effect, no other exemption certificate may be used.

SECTION 4. Tax 11.14 (6) (a) 2. and (13) (a) (intro.) and (b) are amended to read:

Tax 11.14 (6) (a) 2. If a purchaser gives an exemption certificate claiming resale for property acquired and then makes any storage or use of the property other than retention, demonstration or display while holding it for sale in the regular course of business, the storage or use is taxable as of the time the property is first stored or used. The use sales tax

shall be reported and paid by the purchaser with the tax return for the period in which the property is first so stored or used.

(13) (a) (intro.) The certificate for a construction contract entered into before the effective date of a county tax, or a stadium tax as defined in s. Tax 11.001(4) 11.001 (2) (d), form S-207CT-1, is used by contractors to purchase building materials without the county or stadium tax. The certificate shall be used by a contractor only if the following 3 conditions are met:

(b) The certificate shall give the descriptive name of the contract, job site, county or stadium tax effective date, date of prime contract and bid, date contract was signed, seller's name, date of performance of the contract and contractor's name and address and shall be ~~signed~~ signed by the contractor.

SECTION 5. Tax 11.84 (1) (b) 1. and 2. and (c) are amended to read:

Tax 11.84 (1) (b) 1. The transfer is to the spouse, parent, stepparent, father-in-law, mother-in-law, child, stepchild, son-in-law or daughter-in-law of the transferor;

2. The aircraft was previously registered in Wisconsin in the transferor's name; ~~and,~~

(c) Section 77.61 (1) (a), Stats., provides that no aircraft may be registered in Wisconsin unless the registrant presents proof that the sales tax has been paid or a valid exemption was claimed. If the aircraft is purchased from a person other than a Wisconsin aircraft dealer, the purchaser shall pay the tax at the time the aircraft is registered with the Wisconsin department of transportation, division of aeronautics motor vehicles. The tax applies to aircraft registered or customarily hangared or both in Wisconsin, even though the aircraft also may be used out-of-state.

SECTION 6. Tax 11.84 (2) (c) is renumbered Tax 11.84 (2) (c) (intro.) and amended to read:

Tax 11.84 (2) (c) (intro.) Other taxable receipts. The gross receipts from charges for ~~aerial photographs and maps, and from charges for sightseeing flights and for carrying a skydiver are taxable.~~ the following are taxable:

SECTION 7. Tax 11.84 (2) (c) 1. to 4. are created to read:

Tax 11.84 (2) (c) 1. Aerial photographs and maps.

2. Sightseeing flights.

3. Carrying a skydiver.

4. Towing a banner that is not provided by the person towing it, towing a hang glider pilot or towing a glider.

SECTION 8. Tax 11.84 (4) (a) and (c) are amended to read:

Tax 11.84 (4) (a) ~~Transporting~~ Except as provided in sub. (2) (c), transporting customers or property for hire when the customer only designates the time of departure and destination while the owner retains control over the aircraft in all other respects.

(c) Advertising promotions such as ~~sky-writing~~ skywriting and banner towing if the person towing the banner also provides it, except when the aircraft is leased to a person who provides a pilot.

Note to Revisor: Replace the note at the end of Tax 11.96 (2) (b) with the following (there are no changes to the text of Tax 11.96):

Note: An ordinance to adopt or repeal a county sales and use tax or a premier resort area tax should be mailed to Wisconsin Department of Revenue, Office of the Secretary, Mail Stop 624A, PO Box 8933, Madison WI 53708-8933 or delivered to 2135 Rimrock Road, Madison, Wisconsin.

Initial Regulatory Flexibility Analysis

This proposed rule order does not have a significant economic impact on a substantial number of small businesses.

Fiscal Effect

These proposed rules will have no fiscal effect.

Notice of Hearing

Transportation [CR 02-153]

NOTICE IS HEREBY GIVEN that pursuant to s. 345.11 (4), Stats., and interpreting s. 345.11, Stats., the Department of Transportation will hold a public hearing in Room 144-B of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the **3rd day of February, 2003**, at 3:00 PM, to consider the amendment of ch. Trans 114, Wis. Adm. Code, relating to uniform traffic citation.

An interpreter for the hearing impaired will be available on request for this hearing. Please make reservations for a hearing interpreter at least 10 days prior to the hearing.

The public record on this proposed rule making will be held open until close of business February 10, 2003, to permit the submission of written comments from persons unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such comments should be submitted to Anna Biermeier, Department of Transportation, Bureau of Driver Services, Revocations and Suspensions Section, Room 305, P. O. Box 7917, Madison, WI 53707-7917.

Parking for persons with disabilities and an accessible entrance are available on the north and south sides of the Hill Farms State Transportation Building.

Analysis Prepared by the Department of Transportation

Statutory authority: s. 345.11 (4), Stats.

Statutes interpreted: s. 345.11, Stats.

General Summary of Proposed Rule. Chapter Trans 114 promulgates the recommendations of the Council on Uniformity of Traffic Citations, including:

1. The form or automated format of the uniform traffic citation; and
2. Other rules necessary for the implementation and operation of s. 345.11, Stats.

With the advice of the Council on Uniformity of Traffic Citations, the Department proposes amending ch. Trans 114 to:

- Promulgate a revised uniform traffic citation form (the proposed new version is figures 1 to 5 of the proposed rule).
- Promulgate an automated format for the uniform traffic citation (the proposed layout of a printed citation provided to a defendant under the automated system is figure 6 of the proposed rule).
- Clarify that chs. 340 and 343, Stats., definitions apply in the chapter.
- Update document security provisions.
- Update references to previous versions of the form and authorize the use of existing stocks of uniform traffic citation forms.

Changes to the format of the existing traffic citation form

are largely made to speed transcription of the data included on the form when forms are submitted to DMV by courts. In addition, some of the information on the front of the form is substantially simplified. For example, the language, "You Are Notified To Appear, Is this a mandatory Court Appearance YES NO (Read the reverse side of this citation for court information)," is reduced to "Appearance Required No Yes See back for court/point information." The language simplification allows the message to be carried in larger size print and more accurately describes the disclosures on the back of the citation.

In addition this rule making proposes to eliminate the requirement that a court clerk submit a signed, dated letter with each group of adjudicated citations indicating the dispositions entered on the citations are true and correct. The Department has concluded this requirement is unnecessarily burdensome and that it provides no real assurance of authenticity. More useful safeguard mechanisms that DOT and law enforcement use are documented in the rule making such as:

(1) Requiring control numbers appear on preprinted and automated citations.

(2) Issuing blocks of control numbers to designated law enforcement agencies, law enforcement officers, or specific computers, to be printed on automated citations.

(3) Auditing the use of citation forms and automated citation systems.

Finally, the Council on Uniformity of Traffic Citations and Complaints authorizes the Department to make simple changes to the form, such as changing the layout or order of fields on the form, in order to speed up data processing, or to make the citation reflect changes in law. Any changes made under this provision are to be promptly reported to the Council.

Fiscal Estimate

The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district, sewerage district, or federally-recognized tribes or bands. The Department estimates that there will be no fiscal impact on state revenues or liabilities.

Initial Regulatory Flexibility Analysis

This proposed rule will have no adverse impact on small businesses.

Copies of Rule

Copies of the rule may be obtained upon request, without cost, by writing to Anna Biermeier, Bureau of Driver Services, Revocations and Suspensions Section, P. O. Box 7917, Madison, WI 53707-7917, or by calling (608) 266-9901. Hearing-impaired individuals may contact the Department using TDD (608) 266-3096. Alternate formats of the proposed rule will be provided to individuals at their request.

Submittal of proposed rules to the legislature

Please check the Bulletin of Proceedings – Administrative Rules for further information on a particular rule.

**Agriculture, Trade and Consumer Protection
(CR 02-054)**

Chs. ATCP 10 to 12, relating to animal health.

**Commerce
(CR 02-002)**

Chs. Comm 2, 34, 81, 82, 84 and 90, relating to Wisconsin uniform plumbing code; fees; amusement rides; and design and construction of public swimming pools.

**Commerce
(CR 02-072)**

Ch. Comm 16, relating to electrical construction.

**Commerce
(CR 02-077)**

Chs. Comm 20 to 25, relating to uniform (1-2 family) dwelling code.

**Commerce
(CR 02-116)**

Ch. Comm 118, relating to agricultural development zone program.

**Insurance
(CR 02-118)**

Ch. Ins 3, relating to Medicare supplement insurance policies.

**Veterans Affairs
(CR 02-130)**

Ch. VA 12, relating to establishing interest rates and the maximum loan amount under the personal loan program.

Rule orders filed with the revisor of statutes bureau

The following administrative rule orders have been filed with the Revisor of Statutes Bureau and are in the process of being published. The date assigned to each rule is the projected effective date. It is possible that the publication date of these rules could be changed. Contact the Revisor of Statutes Bureau at gary.poulson@legis.state.wi.us or (608) 266-7275 for updated information on the effective dates for the listed rule orders.

Administration (CR 02-100)

An order repealing chs. Adm 25 and 41, relating to information technology development projects and energy development and demonstration projects.
Effective 2-1-03.

Financial Institutions – Savings Institutions (CR 98-137)

An order affecting chs. DFI-SB 1 and 15, DFI-SL 1, 13 and 15, relating to codifying a policy authorizing savings banks and savings and loan associations to invest in subsidiary limited liability companies.
Effective 3-1-03.

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